1908-007 Chancery Causes: D. D. Howard vs. W. T. Gilley &c
Lee Co

Cooper, Pennington, Stapleton, Calton

-Deed

CA-Contract Dispute
T-Property

LEE CIRCUIT COURT.

To the Honorable H. A. W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

Humbly complaining, your orator, D. D. Howard, would respectfully show unto your Honor that, heretofore, to-wit: on the 19th day of October, 1903, he executed a deed of trust to secure a debt of three hundred and seventy four dollars to one J. T. Cooper, all of which is more fully and at large shown by a copy of the said deed of trust, which is filed herewith as a part hereof, marked "Exhibit 1".

Your orator will now further show unto your Honor that, on this deed of trust, he has paid to the said J. T. Cooper, on the _____ day of _____, 190___, the sum of two hundred dollars, by the conveyance to him of a tract of land, which is fully shown by copy of the said deed, filed herewith as a part hereof, marked "Exhibit 2".

Your orator will now further show unto your Honor that, on the _____ day of May, 1904, he contracted and sold to the said J. T. Cooper another small parcel of land, containing about four acres, including an orchard and garden, at the price of one hundred and forty dollars, all of which is more fully shown by a copy of the said Cooper's agreement, which is filed herewith as a part hereof, marked "Exhibit 3".

Each and all of which said several sums were to go as a credit on the said deed of trust and the indebtedness thereby secured.

Your orator would further show unto your Honor that in the

month of October, 1903, he paid to the said J. T. Cooper, on the said indebtedness, the sum of two dollars in beef; and, that along near the same time the said J. T. Cooper assumed a debt of three dollars and forty cents for his son, John Cooper, which was likewise to go as a credit on the said deed of trust; and that he again let him have beef at the price of two dollars and fifty cents, which was likewise to go as a credit on the said deed of trust; and that he sold him one ox or steer at the price of ten dollars, and which was likewise to go as a credit on the said deed of trust.

It will be seen that the sums thus paid amounted to the sum of three hundred and fifty seven dollars and ninety cents, leaving only a small balance yet due on the said deed of trust.

Your orator will now show unto your Honor that in this situation of affairs the said J. T. Cooper had Mr. E. W. Pennington, Trustee in said deed of trust, to advertise and sell the said tract of land embraced in and conveyed by the said deed of trust, claiming that at the time of the said sale there was one hundred and seventy four dollars due him, at which said sale the said land was purchased by W. T. Gilly and J. M. Howard, and your orator is informed a deed was made to them for said land. Your orator avers that at the time of the said last mentioned sale he only owed about sixteen dollars and ten cents of the principal of the indebtedness secured by said deed of trust, with a very small amount of accumulated interest; yet the whole of his land was sold and taken away from him, and which was worth at the time of the said sale not less than one thousand dollars.

Your orator will now show your Honor that he was unable to attend said sale on the day that it was made, and he never saw any advertisement of the time, place and terms of said sale, and he only heard incidentally, a day or two before the said sale was made, that the sale of his said land was contemplated; and, as soon as your orator heard that the said land was advertised for sale, he went to Mr. Noel, a practising attorney, at Pennington Gap, the place at which he understood the said sale was advertised to take place; and where he is informed the said sale was made, and applied to him and employed him for the purpose of stopping the said sale and having the proper credits given to him; that he is informed by the said Noel that he applied to Judge E. W. Pennington, the Trustee in the said deed of trust, for the said paper for the purpose of having the proper credits given him thereon, but that he failed to get same.

Your orator will now further show unto your Honor that the said W. T. Gilly and J. M. Howard have instituted against him an action of ejectment, which is now pending in this Honorable Court to recover the said land, The object of this suit [illegible] is to enjoin and inhibit the said plaintiffs from further prosecuting the said action of ejectment, and to set aside the said sale or pretended sale of said land under said deed of trust, and to set aside the deed made by said Trustee because he was not given his proper credits, and

beacuse the said land was sold for a sum very much greater than he owed, and because the said land was sold at a grossly inadequate and insignificant price; and to have settled and adjusted the said deed of trust or the debt thereby secured and all proper credits applied to it:

And, being withour adequate remedy at law, he prays your Honor's Court of Chancery to take cognizance of his case and grant him proper relief, and to this end he makes W. T. Gilly, J. M. Howard, J. T. Cooper and E. W. Pennington, Trustee, parties defendant to this bill, and he prays that each of them be required to answer the same, but not under oath, that being expressly waived; and, upon a hearing he prays that the said sale by said trustee of said land be set aside, and that the deed made pursuant to said sale be vacated and annulled; that he be given on his indebtedness secured by said deed of trust the proper credits, and the proper balance ascertained, which balance he is ready to pay at any time; and, for full complete general relief; and,

He will ever pray, etc.

J. W. Orr ~~Ward~~
Duncan & Cridlin } p.q.

Virginia; Lee County, to-wit:
This day D. D. Howard personally appeared before me, Geo. P. Cridlin, a Commissioner in chancery, and made oath that the facts stated in the foregoing bill, so far as made upon his own information are true; and that, so far as made upon information derived from others he believes them to be true.
Given under my hand, this 19th day of Sept., 1907.

Geo. P. Cridlin
Commissioner in Chancery.

Plffs Costs:

Clerk	$6.08
Sheriff	2.60
Geo. P. Crudtin ~~[illegible]~~	1.50 Comr.
Wits.	1.00
A. D. Brown N.J.	3.75
	$14.93
Tax	1.50
	$16.43

Deffts Costs Recovered:

Clerk	$2.56
Atty.	15.00
Comr. fee	1.50
	$19.06

D. D. Howard

vs. { Bill for Injunction

W. T. Gilly et al

1908 2nd Jan. Rules

Bill filed, Spa executed & D N

Ans of J. P. Cooper filed

" 1st Feb. Rules

D. N. confirmed & cause set for hearing

D.D.Howard, Complainant.	#	Demurrer &
Vs.	#	In Chancery. Answer of
W.T.Gilley,et al. Defendants.	#	J.T.Cooper.

To the Hon.H.A.W.Skeen,Judge of the Circuit Court for Lee County:

The separate demurrer and answer of J.T.Cooper to a bill of complaint filed in this Honorable court against him and others by D.D.Howard:

And for demurrer to said complainant's said bill,said demurrant says that he is advised that said bill is not sufficent in law to call upon him for answer,and of this he prays judgement,for the following reasons:

1. Because said complainant in his bill fails to give and location,decription or boundary of the four acres of land which he alleges to have sold and contracted to your demurrant;

2. Because said complainant fails in his bill to allege the terms of the contract between himself and your demurrant in respect to the alleged sale of said four acres of land to your demurrant;

3. Because said complainant now where in his bill avers his ability to carry out his part of said pretended contract with reference to the sale of said four acres of land;

4. Beacuse said complainant fails to file with his bill,a deed to said four acres of land to your demurrant;and

5. Because of other matters apparrent on the face of said bill.

But if your respondent should be mistaken in the cause of his said demurrer and other and further answer be required of him, answering he says:

That it is true,said complainant on the 19th day of October, 1903,executed to E.W.Pennington as trustee,a deed of trust to secure the payment to your respondent the sum of $374.00,which sum was evidenced by the notes of said D.D.Howard,waiving the beneift of the homestead law,one day after its date;that it was also true,said complainant and his wife,Jane Howard,by a deed,

dated the 7th day of March,1906,conveyed to your respondent, the surface of a tract of land,supposed to contain 75 acres,for the sum of $200.00 to be applied as a credit upon said debt secured as aforesaid by said deed of trust.but the land included and covered by this last named deed was a part of that covered by said deed of trust. A copy of which deed,is here filed as a part of this answer marked exhibit "A". And your respondent avers that said $200.00 was the only payment said complainant,or any one else ever paid on said debt of $374.00. Your respondent avers that said debt of $374.00 bore interest from the 19th day of October,1903,until the residue of said land covered by said deed of trust was sold by said E.W.Pennington,as hereinafter set forth,and according to a calculation made,there was due on said debt to your respondent on the 9th day of June,1906,the sum of $230.70.

As will be seen from an inspection of said deed of trust,it provided that said complainant should pay the costs of drawing and recording the same,which was $4.75 and the commissions of sale,and the taxes on said land. But he did not pay the costs of drawing and recording said deed of trust but the same was paid by your repsondent.Thus making due your respondent on the 9th day of June,1906,the total sum of $235.45.

And your respondent says that it is true,that as said respndent was still owing him on said deed of trust,said sum of $235.45,and he failing and refusing to pay the same,he requested the said E.W.Pennington to advertise the sale of said land pursuant to said deed of trust,which he did,and at the front door of the post office in the town of Pennington Gap,In this county,on the 9th day of June,1906,offered said land for sale to the highest bidder for cash in hand,and at which sale,said Wm.T.Gilley and John M.Howard became the purchaser thereof at the price of $276.00,and it is further true said E.W.Pennington, as such trustee made said Gilley and Howard a deed to the same.

But your respondent is now informed that in making said sale, there was accounted for to him the said sum of $4.75 and the sum of $174.00 with interest thereon from the 19th day of Oct., 1903 to June 9th, 1906. By this means, your respondent was counted out of the interest on said $200.00 from Oct. 19th 1903, to March, 7th, 1906.

Your respondent says that it is not true, that on the ____ day of May, 1904, or or at any other date, did he contract to buy from said Complainant four acres of his land including his orchard and garden for the sum of $140.00, or any other sum, and he denys that he signed or authorized any other person to sign for him exhibit "3" filed said complainants bill. He avers he never heard of said paper until long after he had had said Pennington to sell said land, and he avers that said paper is a forgery as to him, and he is therefore advised that by reason of said paper being a forgery, it is not binding on him.

Your respondent further denys that said complainant in the month of Oct., 1903, or at any other time paid on said debt; him $2.00 in beef; nor did he along about that date or at any other time assume a debt of $3.40 or any other sum for his son John Cooper, and the same to go as a credit on said debt, or otherwise; nor did said complainant at any time ever let him have beef amounting to $2.50 as a credit on said debt; nor did your respondent get a steer or ox from said complainant, out of the price of which $10.00 was to be applied to said debt. Your respondent says that it is true that at one time he did get from said complainant an ox at the price of $10.00, which he did not pay for in cash at the time, and at one time got from him beef amounting to the sum of $2.00. But the price of said ox and beef were not agreed to be credited upon said debt; inf fact nothing was said as to how your respondent should pay for said ox and beef at the time; and

your respondent avers that said Complainant was owing to him other sums of money than said debt secured as aforesaid by said deed of trust. He avers and aleges that said complainan t owed him at the time he got said beef and said ox for money loaned him,for taxes paid for him at his request,and money paid to F.W.Pennington and H.Nicoll at his request,in order that he might get the title of his lands cleared up,but the amounts of these several items are anot now remembered by your respondent. And said complainant being so indebted to your respondent, he applied the price of said beef and ox on his said account, as he is advised he had the legal right to do. Your respondent did have an itemized account of this indebtedness of said complainant to him,and on the _____ day of June,1906,sued out a warrant against the said Complainant before a justice of the peace of this county on his said account and filed the same with his action;that said warrant was duly served upon said complainant,and a judgement obtained before J.J.Yeary,a justice of said county for the sum of $ _____ and thereupon had issued a fi fa on said judgement,and summons on suggestion against said Wm.T.Gilley and J.M.Howard,which summons on suggestion was duly served upon the said complainant,and thereupon a judgement was obtained against the said Gilley and Howard for the sum of $28.82,the debt of your respondent against said complainant and his costs in said warrants. Copies of said warrants are here filed as part of this answer as exhibits "B & "C",and prayed to be taken as part hereof. But the justice who tried said warrants has been unable to find the account refferred to aforesaid;he has gotten it lost or mislaid,so he informs your respondent. But your respondent avers that he had given said complainant credit on said account for said beef and ox.

Your respondent denys that at the time said E.W.Pennington sold said land under said deed of trust,said complainant only

owed your respondent $16.10;but on the contrary he alleges he owed your respondent said sum of $174.00 and its acuumulated interest,and for drawing and recording said deed of tust $4.75, as well as the interest on $300.00 from Oct.19,1903 to March 7th,1906,and the account above mentioned on which your respondent obtained the judgement aforesaid.

Your respondent denys that said complainant knew nothing of the sale of said land until a day or two before the sale was made by said Pennington. Said sale was advertised for a long time,and one of the advertisements of such sale was posted at the "Jew Mines" store door,and said complainant worked there while said advertisement was up on said door and went in and out of said store almost daily,and it is unreasonable to say that he should not have noticed said advertisement. But at any rate,should not have known of it,that fact is no defense to the sale of said lands,because the deed of trust does not require personal notice to said complainant before sale. Your respondent avers that the sale was duly advertised in the manner at the places required by said deed of trust,and that being done, he is advised that is sufficient.

Your respondent denys that said complainant employed Hon.J.C. Noel, a practicing attorney at this Bar to stop the sale of said land,until he could get his proper credits allowed and applied on said debt. But your respondent is informed that said complainant after said sale was made consulted said Noel,and showed him said exhibit "3" filed with said bill,and wanted to know if that paper was binding on said respondent,and was by said Noel advised that it was not. And your respondent is advised that said complainant was in the town of Pennington Gap on the day of sale of said land,but did not stay until the sale was over. He left said town and place of sale without setting up any objections to said sale to either your respondent or said trustee.

And your respondent denys each and every allegation of said complainant's bill which have not herein been either admitted or specificly denyed,and requires strict proof of the same.

Now having fully answered,as fully as he is advised that it is material for him to answer,he prays that said sale be duly confirmed,and he be dismissed with his reasonable costs in this behalf expended. And he will ever pray,etc.

Blessingame Bros P.D.

W. T. Gilley et al

ads. } Answer of
J. T. Cooper

S. D. Howard

Filed 2nd Jan. Rule
1908 W. B. T. Ewing
Clerk

D. D. Howard .....Plaintiff.

Vs.

William T. Gilly and J. M. Howard .....Defendants.

This cause came on this day to be heard upon the bill of the complainant and the exhibits filed therewith, the separate answer of J. T. Cooper and general replication thereto, the depositions of witnesses taken both for the plaintiff and the defendants in this cause, and was argued by counsel.

On consideration of all which and for reasons appearing to the court, it is hereby adjudged ordered and decreed that the said injunction heretofore awarded in this cause, be and the same is hereby dis-solved and set aside; and it is further adjudged ordered and decreed that the defendants in this cause recover from the complainant their costs in this behalf expended, and for which an execution may issue from the clerk's office of this county. And it is further adjudged ordered and decreed that the said defendants may, at any time hereafter if they so desire, have issued from the clerk's office of this county, by the clerk thereof, a writ of possession against the said complainant for the lands in the bill and proceedings mentioned.

And this cause is stricken from the docket.

D. D. Howard

vs } Decree Final.

Wm. T. Gilley et al
Entered in C.O.B.
#8, page 393.

Enter this
Sept 11th 1908
[illegible]

The deposition of D. D. Howard and Z. S. Stapleton, taken before the undersigned Notary Public at the law office of James W. Orr in the town of Jonesville, Virginia, on the 28th day of April, 1908, by agreement of the parties, to be read as evidence in behalf of the plaintiff in a certain suit in Chancery pending in the Circuit Court of said county in which D. D. Howard is plaintiff, and W. T. Gilley, et als, are defendants.

Geo. P. Cridlin & James W. Orr
of Counsel for the plaintiff

PRSENT &

J. C. Noel and R. L.
Pennington of counsel for
Defendants.

The said D. D. Howard a witness of lawful age and being duly sworn deposes and says:

Questions by Plaintiff's counsel.

Q/ 1. Please state your age, residence and occupation:

A. I am sixty two, years of age, am a farmer, and live in the Pocket Country, Lee County, Virginia, and am a plaintiff in this suit.

Q2. Do you remember executing the deed of trust in the bill mentioned to E. W. Penningtonm, Trustee?

A. I do.

Q3. State what payments you have made, if any ~~you have made~~ on the said deed of trust, and state the dates as near as you can.

A. $200.00 was the first payment, and was paid by conveying a tract of land to J. T. Cooper, about March 7th, 1906. ~~The next payment was a debt that I assumed to pay to John Cooper for.~~ I loaned John Cooper $5.00 one day before I knew what sort of a fellow he was, I named it to his father J. T. Cooper, who told me if John didn't pay it he would. ~~this~~ I charged the balance of about $3.60 which John Cooper had failed to pay to J. T. Cooper.

The foregoing answer is objected to because, before any party

is chargable with debts and liabilities of another, the promise to pay must be in writing and signed by the party to be charged. (See Virginia statute of Frauds and par le agreement.)

J. C. Noel, for defendant.

I also let him have some beef which was $2.50, I do not remember the date but it was after I executed the deed of trust. I also let him have an ox at the price of $10.00, about two years ago this Spring. I think I let him have beef twice, pretty much the same amout each time. I had sold Mr. Cooper a piece of land at $200.00 as above stated, Blanton Calton and Mr. Cooper were on a trade about the piece I sold him, Calton, Cooper, and John Rose, came to my house together, and Cooper wanted another small piece of land so that he could trade Calton the whole tract, and I contracted him a small piece of land about four acres adjoining the other that I had sold him, we all went and looked at a piece of land and looked out a beginning corner. Cooper stated in the presence of us all that if I would sell him the four acres that he would give my wife credit of $40.00 on the deed of trust or note that he held against her. He was to give me $100.00 for the land and also the credit of $40.00 on the deed of trust or note. We set a day to make the deed, and Mr. Calton and Mr. Cooper were to come or let me know and we were to go down to Mr. Pennington's and make the deed, but they never came. Cooper after this came back and said we would draw up a little contract, so that he could perhaps trade the land to some one else. We drew up a little contract, I wrote it myself, and Mr. Cooper said he couldn't write to do any good, and said for me to sign his name to it, and I did so.
I hesitated to sell him the four acres as it took my garden and peach orchard, but I wanted to pay him what I owed him and finally agreed to let him have it, and he remarked that there would be but little left on the deed of trust.

The foregoing answer is objected to because immetarial and irrelevant for if true, it does not show a valid contract for the sale and transfer of real estate.

J. C. Noel for defendant.

Q 4. State whether ot not the writing spoken of by you in reference to the four acres is the same writing exhibited with your bill as Cooper's agreement and marked exhibit "3".

A. Yes sir, I suppose it is we had the paper when the bill was prepared.

Q5. What relation is your wife to the said J. T. Cooper?

A. She is a step daughter.

Q. 6 State whether or not, previous to the sale of your land by E. W. Pennington, Trustee, you had any notice or saw any advertisment of said sale, or to what extent you had notice and all about it.

A. I had no written notice served on me, and I never saw any advertisment. A short time before the sale I heard that Cooper had it advertised for sale. A few days before the sale I went to Pennington Gap with the intention of seeing Mr. J. C. Noel, and attorney in regard to the matter, but I think he was gone and I did not get to see him. I went to the Gap again on the day of the sale I saw Mr. Noel and asked him to see the papers and he went to see them and left me at his office, and he came back and said that Mr. Emmert and Mr. Pennington had just started to the Pocket country and he called to them and they did not hear him, and he did not get the papers. I think Mr. Noel said he would try to see the papers after Judge Pennington came back.

Q. 6 For what purpose did you want Mr. Noel to see the papers.

A. I wanted to see that I had my proper credits. I thought if I had my credits I had it paid only about sixteen or eighteen dollars.

The foregoing question and answer is objected to in so far as it is intented to effect the rights of the defendants Gilley and Howard be-cause immaterial and irrelevant, not showing that the said defendants had knowledge of the action of the plaintiff, as to the matters testified in this answer.

J. C. Noel, for defendants.

Q. 7 Please state what further action you took, if any, on that day after talking to Mr. Noel, or what you did in regard to the matter.

A. I did not remain in the Gap, but went home, as I was not prepared to bid on the land as I did not have any money at that time. And I heard in a few days that the land had been sold.

Q. 8 What quantity of land was sold by E. W . Pennington Trustee, and what was it reasonably worth at that time.

A. I believe there was seventy two acres, I would not have wanted to have taken less that twelve dollars an acre, and believe it is worth that.

Q. 9 What is the said land reasonably worth at this time?

A. I hardly know,but land of like kind adjoining this tract without any mineral on it, is proposed to be purchased at seventy-five dollars per acre, at least that has been proposed for three acres, and the offer has been refused. I think the whole seventy two acres would bring $20.00 per acre. There is coal unsold on three to five acres.

Q.10 State whether or not you are in a condition to pay any balance that might be ascertained to be due on the said deed of trust.

The foregoing question and any answer thereto is object-ed to because immaterial and irrelevant. Because said land has been sold under the provisions of the said deed of trust mentioned in the complainant's bill and the defendant's answer, and the purchase money therefore collected, and the deed executed for same by said Trustee.

J. C. Noel for Defendants.

A. Yes sir, I could pay it.

Q.11 State whether or not at the time the sale was made under the deed of trust you could have paid any balance that might have been due on the deed of trust had you have been given your proper credit.

A. Yes, I suppose I could have paid it.

Q. 12

CROSS)-EXAMINATION BY J. C. NOEL.

Q. 1 Did you give the Trustee, Mr. E. W. Pennington any notice of the fact that you had contracted to Mr. Cooper the four acres of land you speak of as including the garden and peach orchard at the price of $140.00?

A No sir, I don't think I did .

Q.2 On the date and place of sale of said land did you give the purchasers of said land noticeof the fact that you had practically paid off that deed of trust?

A. No sir, I did not.

Q. Did you at any time forbid the sale of the said land under the said deed of trust.

A. Not sir.

Q. Was the paper that you file with your bill of complaint as exhibit "3" ever recorded.

A. No Sir.

Q. Did J. T. Cooper ever have that paper in his hand that you know of.

A. I do not know that he had it in his hands, and I don't know that he didn't.

Q. That paper you wrote entirely yourself and signed his name to it, did you

A. Yes sir.

Q. Did he in anywise mark said paper in recognition of its being signed by him, or acknowledging the signature?

A. He did not.

Q. Was the piece of land mentioned in exhibit "3" contracted to J. T. Copper before or after you sold him the piece of land mentioned by you at the price of $200.00.

A. I sold him the small piece after I sold him the $200.00 tract.

Q. Did you sell it to him after you had made the deed for the $200.00 tract.

A. I don't believe the deed was made.

Q. How long had the $200.00 tract been contracted to Cooper before you executed a deed therefore?

A. To the best of my recollection it had been over a year.

Q. Now, if the land mentioned in exhibit "3" was contracted to Cooper before you executed the deed for the $200.00 tract, why were not both pieces of land included in the deed?

A. Cooper didn't mention anything about it, neither did I.

Q. Do you think it could have been more than a year between the time from which youncontracted the $200.00 tract and the time on which you executed a deed therefore

A. I don't remember exactly. I asked him about making a deed at one time and he said he didn't want a deed then.

Q. About how long then, do you think it was between the time on which you contracted the $200.00 tract and the time on which you contracted to Cooper the land mentioned in exhibit "3"?

A. It must have been up towards two years the best I can remember.

Q. You know what day of the moth this is?

A. The 28th.

Q. You usually keep up with the days of the moth right at the time do you not.

A. Pretty much.

Q. Now if you do keep up with the days of the month, why did you in drawing this paper filed as exhibit"3" write it the blank day of May, 1904.

A. I could not state that, I do not remember.

Q. How long after you had executed the deed of trust mentioned in these proceedings was it until you contracted to Cooper the land mentioned in exhibit "3".

A. It is two years to the best of my reccollection, I can't remember exactly

Q. I h-and you the deed of trust and will ask you to state upon what day it was purported to have been made.

A. It seems to have been made on the 19th day of October, /1903.

Q. Now I hand you exhibit "3" and will ask you when that contract was purported to have been made.

A.

A. It seems to have been made in May 1904.

Q. Then if it was made in May 1904, you are mistaken, ~~are~~ you not, when you say it was made after the time at which you contracted to Cooper the $200.00 tract.

A. Yes it hasn't been as long quite as I had thought.

Q. When did you purchase the tract of land mentioned in the deed of trust and from whom did you purchase it.

A. I have owend the tract of land about six years, and purchased it from Stewart and Kaufman.

Q. For what was this deed of trust executed, how came you to owe Cooper.

A. The notes on the land was due, and I borwowed the money from Cooper to pay it.

Q. Was the money got from Cooper on the day on which you executed the deed of trust?

A. Yes sir.

Q. Now if you contracted the $200.00 tract of land to Cooper before you executed the deed of trust why did you not take credit for the $200.00 at the time on the deed of trust and execute a deed for the same.

A. Mr. Pennington, Mr. Cooper and myself agreed to give a deed of trust on the whole thing and let him give me credit for the $200.00 on the note.

Q., On the third day of August, 1906, I will ask you that if you did not tell John Ely, or J. C. Ely Deputy Treasurer of Lee County, that you were no longer the owner of that land that it belong to Mr. William Gilley, and that Gilley must pay the taxes on it, and did you not then and there give to the said Ely an order, for the unpaid taxes amoutnting to $5.88, to Willaim Gilley.

A. I did give Mr. Ely an order, but I did not have any such talk to the said Ely, about the ownership of the said land.

Q. I hand you what purports to be an order from you to W. T. Gilley to pay your taxes for the years 1904-5 amounting to $5.88, and three

Mr Wm Gilley
Please pay J C Ely
my taxes for the
year 1904 + 1905
which is $5.88
aug 3-1906
D. D. Howard

Mr D. D. Howard (surface) Lick Branch [illegible] : Rocky Station District, No. 4.

To A. M. ELY, Treasurer Lee County, Virginia, Dr.

No. P 9 No. L 30 1904	Val.	S Tax 20 & 25 cts. on $100	St'e schl tax 10 cts on $100	Pensions 5 cts on $100	Co. Levy 40 cts. on $100	Road T. 33⅓ cts. on $100	Co. sch'l tax 10 cts on $100	Dis Schl tax 10 cts on $100	TOTAL AMT OF TAXES.
Head Tax		~~$1.50~~							~~$1.50~~
Per. Prop.									
Bonds, Notes &c									
No. 1 Tracts 152 Acres	190	38	19	10	76	63	19	19	244
Lots									
TOTAL									244
5 per cent pen'ty									14

Aug 3 - 1906 J. C. Ely 2.58

Received Payment, D, Treasurer.

Nov 2-1905 - Credit
by J T Cooper for one
half of land 1.35
with one half of int & penalty

Paid by Wm Gilly 1.40
Aug 3-1906
J C Ely & Co

Mr W. W. Howard (Pucketts Cr) Rocky Station ~~White Shoats~~ District, No. 4.

To A. M. ELY, Treasurer Lee County, Virginia, Dr.

No. P 9 No. L 14 1904	Val.	S Tax 20 & 25 cts. on $100	St'e schl tax 10 cts on $100	Pensions 5 cts on $100	Co. Levy 40 cts. on $100	Ro'd T. 33⅓ cts on $100	Co. sch'l tax 10 cts on $100	Dis Schl tax 20 cts on $100	TOTAL AMT OF TAXES.
Head Tax		~~1.00~~							
Per. Prop.	200	40	20	10	80	67	20	20	2 57
Bonds, Notes &c									
No. Tracts Acres									
Lots									
TOTAL									2 57
									13
5 per cent pen'ty									2 70
								2nd	21
									2 91

Received Payment, Aug 3-1905 J C Ely D, Treasurer.

Paid by Wm Gilly 2.91
Aug 3-1906
J to Ely 87

Mr D D Howard (Pucketts Cr.) Rocky Station District

To A. M. ELY, Treasurer Lee County, Virginia, Dr.

No. P 8 No. L 7 / 1905	Val.	S Tax 20& 25 cts. on $100	St'e schl tax 10 cts on$100	Pensions 5 cts on $100	Co. Levy 40 cts. on $100	Ro'd T. 33⅓ cts. on $100	Co. sch'l tax 10 cts on$100	Dis Schl tax 10 cts on$100	TOTAL AMT OF TAXES.
No. 1 Tracts Acres									
152	190	38	19	10	76	64	19	19	245
TOTAL									245
5 per cent pen'ty									12
Total									257
Interest									
To									

Date Aug 3 1905 Received Payment J C Ely D Treasurer

Nov 2 1905 Credit by
J. F. Cooper 123
for one Half of Land
tax

Paid by Wm Gilley 128
Aug 3-1906

tax ticketsagainst you and shown to have been paid by Wm. Gilley, if that is the order given by you, and the tax tickets against said tract of land, I will ask you to file same with your deposition mark"order and tax receipts"

A. It is the order given by me and the tax receipt against the land and I file same marked as requested.

Q. ~~If~~ Did not J. T. Cooper obtain a judgment against you before Justice A. J. Yeary in 1907 for $28.82?

A. Yes sir I suppose he did.

Q. For what was that judgment obtained.

A. ~~I did~~, It was for my proportional cost in a fee in having Henry Nicol to procure a deed for the Mallette land.

Q. When was it that Cooper paid you part of that cost.

A. I can not state the date of that, it has been some time back and I don't remember how long.

Q. On that debt did he not give you credit for the ox you speak about, also the beef mentioned by you in your deposition?

A. If he did I never saw or heard of it.

Q. How much, originally, was your proportional part of cost in securing that Mallette deed?

A. The cost of the deed was fifty dollars, there was twentyfour hundred acres of land involved in the deed, each man or party interested was to pay in proportion to the number of acres he owned, I owened one hundred and fifty two acres of the boundary.

Q. If that judgment was for your part of the fee only, can you explain why it was that he obtained judgment against you for $28.82 ?

A. I cannot sir. I was noticed to appear before a justice but did not attend the trial.

Q. You were given notice were you not, that Gilley and Howard, defendants in this suit had been garnisheed on the judgment obtained against you.

A/ Yes sir.

Q. You were also informed, were you not, that they had paid that judgment out of the purchase money on the land.

A. No Sir, I was never so informed.

Q. How far do you live from what is known as the "Jew Mines"?

A. About 1 1/4 miles. I suppose.

Q. Did you do any work at those mines in the year 1906 during the months of May and June.

A/ I do not think I did.

Q. Where were you in the months of May and June, 1906.

A. I suppose I was at home on the farm.

Q. Were you not frequently there at those mines in the Spring and Summer of 1906, and were you not frequently in and out at the store or commissary at those mines?

A. Yes sir, I was there frequently.

Q. Do you say that you never saw the advertisment of the sale of that land posted on the store door at the Jew Mines.

A In passing in and out I might have seen it but I could not have read it without my glasses , I can't read without them.

Q. In Speaking to me(J. C. Noel) on the day of sale of your land under the deed of trust mentioned in these proceedings, did you not merely ask me to get the papers and go with you over to see if you had been given your credits or not?

A. I think so, something to that amount.

Re-examintaion by James W. Orr,

Q. You state that you may have seen the advertisment at the Jew store, but that you could not have read it without your glasses, did you read it or hear it read, or know that any such advertisment was posted there.

A. I did not.

Q. How did you happen to give the order in favor of J. C. Ely to Wm. Gilley to pay your taxes for the years 1904-5, dated Aug. 3rd, 1906?

A. Mr. Ely came up there and I was not prepared to pay the taxes at that time and he named something about Mr. Gilley having some of my money in his hands, I told him I would not give him an order on that money as there was a suit pending and he insisted that I should give him an order and I did give him the order and he said it would not make any difference any way, if Mr. Gilley held the land

Mr D. D. Howard (Lick Br.) *Rocky Station District*

To A. M. ELY, Treasurer Lee County, Virginia, Dr.

No. P 8 No. L 35 1906	Val.	S Tax 20& 25 cts. on $100	St'e schl tax 10 cts on $100	Pensions 5 cts on $100	Co. Levy 40 cts. on $100	Ro'd T. 33⅓ cts. on $100	Co. sch'l tax 10 cts on $100	Dis Schl tax 10 cts on $100	TOTAL AMT OF TAXES.
No. 1 Tracts / Acres									
15 2	228	45	23	12	90	76	23	23	292
TOTAL									292
5 per cent pen'ty									15
Total									307
Interest									27
Total									334

Date Apr 11 1906 Received Payment J. D. Ely D Treasurer

he could pay the tax, and he didn't and I held the land, I could pay it.

Q. Have you ever been paid by the Trustee Mr. Pennington or any body else, the amount for which the land was sold over and above the amount claimed by Cooper as the amount of the deed of trust.

A. There was a check sent to me and I sent it back to Mr. Pennington.

Q. When was that or do you know?

A I think the check was issued, may be, the last day of March, 1907 I think it was after this suit had been brought, and on that account I sent the check back.

Q. If you paid any taxes for the year 1906 and have a receipt for the same, will you please file the same with this, your deposition marked "Tax Ticket".

A. I did pay a tax ticket for the year 1906 on 152 acres of land, of which the 72 acres is a part, and I file the ticket as requested.

And further this deponant saith not.

D. D. Howard

Z. S Stapleton another witness of lawful age being duly sworn deposes and says:

Q. Please state your age, residence and occupation?

A. I am 39, live in the Pocket country and am a farmer.

Q. Are you acquainted with the 72 acres of land in controversy?

A. Yes sir, I am acquainted with it, live about 1 1/4 miles from it, and own some land in the same neighborhood.

Q. Please state what this 72 acres of land was reasonably worth on the 9th day of June, 1906.

~~are~~ objected to as The foregoing question and any answer thereto are immaterial and irrelevant.

J. C. Noal, For defendant

A. I would not have wanted to take less than $700.00 had it been mine. and I think it was worth that.

Q. What do you consider it reasonably worth that now?

A. I should think something like $800.00

Q. Has there been any improvements since 1906 on this land.

A. Yes some, and land has advanced in price

Q. And further this deponant saith not.

Z. S. his X mark Stapleton

The further taking of these depositions is adjourned until the 1st day of May 1908, at the law office of J. C. Noal in Pennington Gap. Va. and I certify that the foregoing depositions of D. L. Howard and Z. S. Stapleton were taken subscribed and sworn to before at the time and place and for the purposes in the Caption mentioned.

Apr. 28 1908. A. A. Brown N. P.

D. W. Howard.

vs. } Depositions.

W. T. Gilley, et al

Filed May 2, 1908.

H. G. Ewing,

Clerk

Notary Fee, $3.75.

Witness.-(Stapleton).

The depositions of E.W.Pennington and others taken before me, GEO.P.Cridlin, a commissioner in chancery for the circuit court of Lee county, Virginia, at the law office of Pennington Bros. at Pennington Gap, Va., on the 1st day of May, 1908, pursuant to agreement of parties, which depositions are intended to be read as evidence on behalf of the defendants in a certain suit in chancery now depending in the Circuit court of Lee County, in which D.D.Howard is plaintiff and W.T.Gilly et al are defendants.

Present James W.Orr of counsel for plaintiff and J.C.Noel and E.W.Pennington attorneys for defendants.

E.W.Pennington a witness of lawful age being duly sworn deposes as follows:

Q.1.- Please state your age, occupation and place of residence.

A.- I am 47 years old, by occupation I am attorney at law, and I reside in Pennington Gap, Lee County, Virginia.

Q.2.- State whether or not you are the trustee who made the sale of the land in controversy, and if so , state whether you advertised ~~and~~ sold the land according to the provisions of the deed of trust executed by the plaintiff?

A.- I was the trustee who made the sale of the land in controversy in this case. Before the sale was made I advertised the time, terms and place of sale for a period of thirty days or more, one of which advertisements I posted at the front door of the post office in Pennington Gap, and I had one posted at what was then known as the "Jew Mines" and near the mouth of Pucketts creek, and I also had one posted at the front door of the Courthouse of this County. I made the sale of this land on the 9th day of June 1906, at the front door of the post office in the town of Pennington Gap ~~and~~, and the front door of the post office of Pennington gap was the place I advertised to make said sale. The sale that I made was at public outcry and to the highest bidder, and as I remember the occasion there were several per-

sons present at the time of the sale. I do not remember how many persons bid on the land, but I know there were more than Gilly and J.M.Howard.

Q.3.- If you have in your possession the original deed of trust under which the land was sold please file the same with this yourdeposition marked "trust Deed".

A.- I have not the deed at this time , but am informed that it is already in the files of the papers of this case, and if such deed is in the files of this cause I herewith file it marked trust deed as requested.

Q.- Please state how you disbursed the proceeds of the sale of said land, and if you have a statement in writing of the same please file the same herewith marked statement.

Obj.- Excepted to as inadmissable because the statute requires the trustee to make a report and an account of the sale to the Commissioner of Accounts and it then becomes a matter of record, which is the best evidence. Jas.W.Orr, for plff.

A.- I thought I had a statement in my private file in this case showing how I had disbursed the purchase price of said land but I am unable to find it. My recollection is that the land sold for $276.00, that out of this $276.00 the purchasers of the land paid me enough to pay Mr.Cooper's debt , the interest on it Commissions of sale and also about $25.00 outside. The $25.00 spoken of was a sum over and above the sum sufficient to pay Mr.Cooper's debt, interest, commissions &c., and was also a sum over and above some kind of judgment and garnishment which Mr.Cooper had against the plaintiff in this case, and also over and above five dollars and some cents which the purchasers paid, as they informed me taxes on the land. It was some few months after I had made this sale before the purchasers finally settled with me as trustee, and when they did settle, I mailed, as I remember, to the plaintiff in this case, the residue of the purchase price of said land, by a check. I believe the check was either $25.63 or $26.63. In a day or so after I had mailed the check to

the plaintiff in this case, I received it back again through the mail, as I remember, without any letter making any explanation whatever. And that amount I still have in my hands ready and willing to pay it at any time to the parties entitled thereto.

Q.5.- State whether or not at any time you had any notice, directly or indirectly, that the plaintiff in this cause claimed to have at any time paid off the debt to J.T.Cooper, secured by said deed of trust, and whether or not he or any one for him forbid the sale of said land?

A.- At no time before the sale was made by me of said land, did I know, or have any information whatever that the debt for which said land was sold was not justly due and owing to J.T.Cooper. It was not until after I had made the sale of said land that I heard that the plaintiff in this case was claiming not to owe the debt. As above stated, the purchasers of said land did not finally settle with me for some time after the sale was made, and I did not insist upon their settlement of the land earlier for the reason that if the plaintiff in this case did not owe the debt he could take some steps and have the question determined between him and Cooper, but as no legal steps were ever taken by the plaintiff I did finally have the purchasers to settle with me on the purchase price of said land. I executed no deed to said purchasers until after they had settled with me on the purchase price of it, I do not think the deed was exeuted by me until about the date of its acknowledgement, and perhaps about the time I sent the plaintiff the check above referred to.

Cross Examination.

X.Q.1.- Did the purchasers at the sale made by you as trustee pay down the purchase price or any part of it, and if so how much?

A.- My recollection as to this is not very clear. I do not hardly think that the purchasers paid me anything on the very day of sale, but they did pay me within a day or two thereafter, as I remember, $100.00. The paymengt which they did make to me, as

I remember, were made by checks, and if they did pay me by checks if the purchasers will find they checks they will show the dates. I am shown a receipt signed by me as trustee for $100.00, paid me by W.T.Gilly and J.M.Howard, and this receipt is dated June 22 1906, and I think this is the first payment made on the land, and as to the payment of the residue of the purchase price for this land, I am uncertain as to when they were made, but possibly from two to six months afterwards the $100.00 was paid.

X.Q.2.- What cerdits were allowed the plaintiff on the deed of trust at the time the sale was made?

A.- My recollection is only $200.00. My recollection is that there is attached to the original deed of trust one of the original advertisement of this sale and on this advertisement is a statement showing what credits were allowed on the original debt and also there was appended to this advertisement a calculation on a yellow piece of paper, which advertisement and yellow paper I herewith file marked "notice"

X.Q.3.- At the sale made by you as trustee, did you offer for sale any amount of land less the entire 72 acre tract?

A.- My recollection is I first offered the land for sale by the acre and got no bidder, then I offered the whole tract, and sold it as a whole.

And further this deponent saith not.

E. H. Pennington

J.T.Cooper, another witness of lawful age being duly sworn deposes as follows:

Q.1.- State your age, residence and occupation.

A.-- I am 56 years, I am a farmer, and reside in the Pocket.

Q.2.-- Are you the J.T.Cooper for whose benefit the land in this controversy was sold, and one of the defendants in this cause?

A.-- I am.

Q.3.- The plaintiff in this case claims that he sold to you a small boundary of the land in controversy containing about 4

acres, including a peach orchard and garden, at the price of $140.00 to be credited on the deed of trust mentioned in this suit, state whether or not he did sell you any such boundary of land?

A.-- He did not sell me that land.

Q.4.-- The plaintiff further claims, and exhibits with his bill a writing designated as exhibit 3, which he claims to be a contract between you and himself for this small boundary of land, claiming that you directed him to draw up said paper and to sign your name thereto, state whether or not you did direct him to draw up said paper and sign your name to it.

A.- I did not.

Q.5.- State whether you ever saw said writing or ever heard it read?

A.-- I never heard of such a writing until last Court at Jonesville when it was shown to me there.

Q.6.- The plaintiff further claims that you assumed the payment of a debt of your son John for the amount of $3.40, which he credited on said deed of trust, state wherther you assumed any such debt?

A.- I did not.

Q.&.) He claims that he also paid you $2.00 in beef on said deed of trust, state whether this is true?

A.- I got $2.00 worth of beef from him and I credited on the borrowed money he owed me, there was nothing said at the time I got the beef where it was to be credited.

Q.8.- Did he at the time you got the beef, owe you other sums of money other than that secured by the deed of trust?

A. He did.

Q9.- He further claims that he sold you an ox at the price of $10.00 to be credited on said deed of trust, state whether or not that is true?

A.- I got the ox from him at the price of $10.00, which was credited on the debt he owed me outside the deed of trust. He did not direct me as to which debt it was to be credited on..

Q.10.- He further states that at another time he sold you beef to the amount of $2.50, state whether or not this is true.

A.- I do not know anything about that. I never got any beef only the one time of him.

Q. 11. At the time the land in controvesy was sold under this deed of trust, how much in all had the plaintiff D.D.Howard, paid you on said deed of trust?

A.-- He had never paid me anything, except the piece of land which I bought from him at the price of $200.00.

Q.12.- State whether or not any notices of the sale of this land were posted in the neighborhood of where the land is situated/

A.- There were two put up within a mile and a quarter of the land, one at Marion Kirk's store and the other at the store at the "Jew Mine". I put up the notices myself or saw them put up.

Q.13.- At the time these notices were posted state if you know what Mr.Howard the plaintiff was doing,-where he was at work?

A.-- He was at work there at the "jew Mine"

Q.14.-- Were the store at the "jew mine " and Marion Kirk's store public places?

A. I think they were.

Q.15.- Were you at the place of sale on the day the said land was sold by the trustee?

A. I was.

Q.16.- State whether or not D.D.Howard was there?

A.- He was not present at the sale, but he was in town the morning of the sale.

Q.17.- Some time after the sale was made, state whether or not you obtained judgment aginst D.D.Howard, before a justice for any debt he owed you? if so will you file said judgment and the account upon which same was obtained?

A.- I did obtain such judgment and file warrant account marked "warrant".

Obj. The forgoing question and answer thereto is excepted to because irrelivant and immaterial.

J.W.Orr for plff.

Q. 18.- How did you collect the judgment just referred to?

Obj.- excepted to for reason stated neaxt above.
J.W.Orr, for plff.

A. I garnished W.T.Gilly and J.M.Howard.I file garnishment proceeding herewith marked "Garnishment"
Obj. the foregoing answer is further excepted to because Howard and Gilly, so far as has been shown, if they were indebted at all, they were indebted to the trustee and not to Mr. ~~Xxxx~~ D.D.Howard.

J. W. Orr for plff.

Cross Examination.

X.Q.1.- Can you read and write.

A.- I can.

X.Q.2.- Do you sign your own name to instruments of writing by writing your signature or by making your mark?

A.- I sign my own name by writing my own signature.

X.Q.3.- You state that the plaintiff was indebted to you otherwise than by the deed of trust, please state what amount he ~~owe~~ owed you and what it was for and the dates when contracted?

A.-- Part of it was for money I loaned him to buy meat and bread with, part of it was for money to pay his taxes with, and part of it was money I loaned him to get a deed with to the land we are now lawing about. The latter part was for the Nicholl deed. I think he got $20.00 for that purpose, ~~xxxxxxxxxxxxxxxxxx xxxxxxxxxxxx~~ About three or four years ago I loaned him $2.00. Last fall was a year ago I paid his tax for him, it was something over three dollars. Just after I let him have the money to get the Nicoll deed I let him have $5.00 more. I believe this is all I remember now.

Q.4. I believe you have stated that you gave him credit for the ox and for the $2.00 worth of beef on those items, is that correct?

A.- It is correct.

And further this deponent saith not.

J. Keeper

Virginia, Lee County, to-wit:

I, Geo.P.Cridlin, a Commissioner in Chancery for the Circuit Court of Lee County, Virginia, do certify that the foregoing depositions of E.W.Pennington and J.T.Cooper were taken, sworn to and subscribed before me at the time, place and for the purpose in the caption mentioned.

Given under my hand this the 1st day of May, 1908.

Geo.P.Cridlin
Commissioner in Chancery.

D. D. Howard
vs. { In Cly.
W. T. Gilly et al
Defts. Depositions
Filed May 2, 1908
H. C. T. Ewing, Clerk

Conv. fee $1.50

The deposition of R. B. Catlon et al taken before me, Geo. P. Gridlin, a Commissioner in Chancery for the Circuit Court of Lee County, Near Pennington Gap, Va on the 1st day of May 1908, pursuant to agreement of Counsel, which deposition is to be read as evidence on behalf of the plaintiff in a certain suit in Chancery now pending in the Circuit Court of Lee County, Va. in which D. D. Howard is plaintiff and W. S. Kelly et al are defendants

Present Geo. P. Gridlin and J. W. Orr for plaintiff & J. C. Noel for Defts.

R. B. Catlon a witness of lawful age being duly sworn deposes as follows:

2. 1, Please state your age, occupation and place of residence.

A. I am 49 years old, am a farmer reside near Pennington Gap.

Q. 2 I will ask you to state what you remember, if anything relative to a trade or talk about a trade for land between yourself, J. J. Cooper and D. D Howard, sometime in the spring of the year 1904. Please state all about the transaction?

A. I was talking buying a tract of Cooper, and I

concluded that I didn't want to buy from Cooper unless I could get a suitable piece of Mr. Howards land, as Howard adjoined so close to where I would have to build, and Mr. Howard finally agreed to let me have a small piece I don't know just the number of acres and I don't remember just the amount that I was to give him for it, it was $25 or $50. I think it was one or the other. After we got that for Cooper would not agree to release the Deed of Trust unless Howard would sell me enough to pay the whole amount due, I think he said about $400.00, or he might have said $200.00 and I told Howard if he would let me have it straight across the hollow on the lower end of his place that would have taken from 15 to 25 acres, I would pay off the deed of trust, but Howard didn't agree to that. Mr. Cooper offered to give Mr. Howards wife $40.00 and the deed of trust if he would let me have enough to pay the deed of trust. We agreed and set a day to meet and make a deed. I noticed Mr. Howard had planted some potatoes on Mr. Cooper's deed and I was afraid he would give me some trouble and I did not go back to make the deed and close trade. Mr. Howard's potatoes were where I wanted to build that spring. When talking about the

traded for Mr. Howards land we went out on it and looked out a beginning corner and how the line should run up to the top of the hill. We did not go all around tho, or mark the boundaries.

Cross Examination

X 2.1. If I understand you right it was you and not Mr. Cooper who was trying to buy a piece of Mr. Howards land

a. Yes it was me, not Cooper.

X2.2. And Mr. Cooper only offered to give him a credit of $40.00 if Howard would sell you enough to pay off the deed of trust

a. Yes, he offered to make Howards such a present of $40.00, provided he sold me enough to pay the whole deed of trust

X 2.3. Do you remember whether Mr. Howard had planted the potatoes you speak about before or after you was talking of trading.

a. They were planted after Me and Mr. Cooper had agreed on our trade, but before I and Cooper had had the talk with Howard, tho I did not notice it until after we had had that talk.

X-2-4 As I understand you your talk with Mr. Howard was for buying more than the peace orchard and garden.

A. I finally agreed with Mr. Howard

to take the orchard and garden, but I wanted more, and Mr. Cooper made the proposition to make Howard's wife a present of $40.00 if he would let me have enough land to pay the deed of trust off.

x2.5. Cooper did not then agree to take the peach orchard and garden at any price?

a. He did not. It was me, not Cooper who was proposing to buy the land.

Re-Examination

2. Was it the understanding between you, Cooper and Howard that any sum you were to pay for land off Howard's tract should go on the Cooper deed of trust?

a- Yes if I took the land I wanted to pay it on the deed of trust and that was agreed to. Mr. Howard agreed to let it go on the deed of trust if I took it.

And further this witness saith not.

R. B. his x mark Colton

Wit. Claims one day 50 cts paid by plff.

E. S. Stapleton another witness of lawful age being duly sworn deposes as follows:

Q.1. State your age, occupation, and place of residence?

a- I am 46 years old, am farmer, and at present am Deputy Sheriff of Lee County. Reside in Pocket.

Q2. Are you acquainted with the land upon which D. D. Howard resides, and which was sold by E. W. Pennington Trustee to W. L. Selby and J. M. Howard?

A- I am, and have known it nearly all my life. I now live something like 2 Miles from it.

Q3. I will ask you to state what you consider to be the fair cash value of said tract of land at the time the same was sold by E. W. Pennington, Trustee, which sale was made in June 1906?

A- The foregoing question and answer thereto is objected to because immaterial

J. C. Nool & Ell Pennington for dft

A- I consider that its fair cash value at that time was about $700.00

Q.4- Please state what you consider to be its fair cash value at the present time.

Obj. The foregoing question or answer thereto is objected to because immaterial

A. I consider it now worth $800.00

Cross Examination-

Q- Do you remember whether or not you saw the advertisement posted by the Trustee for the sale of this

land before the sale?
A. I do not remember having seen the notice, but I heard it talked of in the Packet that it was to be sold.

And further this deponent saith not.

E. S. Stapleton

Wit. Claims on day 50 cts

Virginia, Lee County, to-wit:

I Geo. P. Cridlin, a Commissioner in Chancery for the Circuit Court of Lee County, Virginia, do certify that the foregoing depositions of R. B. Calton and E. S. Stapleton were taken, subscribed and sworn to before me at the times, place and for the purpose in the caption mentioned.

Given under my hand this the 1st day of May, 1908.

Geo. P. Cridlin
Comr. in Chy.

D. D. Howard

vs. { In Eq.

W. T. Filly et al

Depositions of

	Cost
R. B. Calton	.50
E. S. Stapleton	50
	$1.00

Comm. $1.50

Filed May 2, 1908.

W. A. Ewing, Clerk.

D. D. Howard Plff.

vs.

W. T. Gilly et al Defts

I, D.D. Howard, do solemnly swear that since depositions were taken in this Cause on the 1st day of May 1908, I ~~find~~ on the evening of the 2nd day of May 1908, discover evidence of which I had no previous knowledge, ~~that~~ which evidence I am informed by my Counsel is material to my side of the issue involved and that I cannot safely go to trial without the same ~~So help me~~ So help me God.

D. D. Howard

Subscribed and sworn to before me, this the 6th day of May, 1908.

Geo F Riddick
Comr in Chy

C. A. Howard
vs. { In Chy

Mrs J. Gilly et al

Affidavit

Filed May 6 1908.
H. C. D. Ewing,
Clerk

A. M. ELY,
Treasurer of Lee County.

Land 15-2 acres

Jonesville, Va., May 24 1906

D. D. Howard, Puketo, Cr.

Property tax	1904 –	2.93
Land tax for	1904	2.80
land tax for	1905	2.56
Property for	1905	1.84
	total $	10.13

15.36

116.70
50.00
37.10
203.80

THIS DEED made and entered into on this the 7th day of March, 1906, by and between D.D. Howard and Jane Howard, his wife, parties of the first part and J.T. Cooper party of the second part, all of Lee County, State of Virginia.

W I T N E S S E T H:

That of the Sum of two hundred dollars ($200.00) cash in hand paid the receipt whereof is hereby acknowledged, the said parties of the first part have bargained and sold, and by these presents do graint bargain, sell, deliver and convey unto the said party of the second part a certain tract of land lying and being in the County of Lee, State of Virginia in Rocky Station District of said County and in that section of country called the Pocket and bounded as follows, to-wit: BEGINNING on a black gum on Lick Branch marked as a line tree in a line between J.T. Cooper and Z. F. Kirk; thence Southwestardly and up a spur between the left hand and right hand forks of Lick Branch to the top of said spur; thence following said spur or ridge in same direction as it meanders to W.T. Kirk's line; thence Norphwardly and running with said Kirk line to B.F. Kirk's land and with his line along the top of the ridge to Zion Parson's land ; thence Eastwardly along the top of a ridge and with the lines of Green Stapleton and John M. Carter To J.T. Coopers line and with the same to the beginning containing 75 be the same more or less. To have and to hold the same together with the appurtenances thereunto belonging, unto the said party of second part his heirs and assigns forever; except the coal right sold to F.A. Straton by Wm. Pennington. And the parties of the first part warrant generally the title to the said Premise.

Witness the following signatures and seals.

D.D. Howard (Seal.)

Jane Howard (Seal.)

Virginia,

Lee County, to-wit:

I, A.N. Pennington a Justice of the Peace in and for the County aforesaid in the State of Virginia, do certify that D.D. Howard and Jane Howard, whose names are signed to the within writing bearing date on the 7th day of March, 1906, have acknowledged the same before me in my county aforesaid.

Given under my hand this the 10th day of March, 1906.

A.N. Pennington. J.P.

Notice . Notice

Pursuant to the terms of a deed of trust, dated on the 19th day of October , 1903, and executed by D.D. Howard and Jane Howard to the undersigned as trustee to secure to one J.T. Cooper the sum of $374.00, with interest from October the 19th, 1903, and on which sum of money the said Howards have paid the sum of $200 to said Cooper, this leaving the sum of $174 with interest from Oct., 19th, 1903, till paid and pursuant to the request of said Cooper, I will at the front door of th the post-office in the town of Pennington Gap, Va., about the hour of 11 A.M. on Saturday the 9th day of June, 1906, at public outcry, to the highest and best bidder for cash in hand, offer for sale, enough of the land mentioned and described in said deed of trust and fees for recording the sam which amounts to the sum of $4.75 and the commissions of sale at the rate of five, per cent and all taxes remaining unpaid on said tract of land.

To pay said $175.00 and its interest to date of sale

AMOUNT OF DEBT	$174.00
INTEREST ON SAME @ 6% /06	27.70
RECORDING D.of T. AND DRAWING SAME	4.75
5% COMMISSION ON SAME	10.32
TAXES NOT ASCERTAINED	5.26
TOTAL EXCLUSIVE OF TAXES	$216.77

2 22 13

For a particular description of the land conveyed by said deed of trust see D.B. No:41 pages 16 and 17. But there will be excepted from said land conveyed by said deed of trust that part of the same which was conveyed by said deed of trust on March the 7th, 1906, by said Howard and wife to said Cooper, and the rights of F.A. Stratton or assigns in and to the same.

The purchaser will be made a deed of Special Warranty. There will perhaps be some 50 to 60 acres of the land to be sold, but the sale will be by the boundary.

This May the 7th, 1906. 116.77

E.W. Pennington,
Trustee.

THIS DEED made and entered into on this the 7th day of March, 1906, by and between D.D. Howard and Jane Howard, his wife, parties of the first part and J.T. Cooper party of the second part, all of Lee County, State of Virginia.

W I T N E S S E T H:

That of the sum of two hundred dollars ($200.00) cash in hand paid the receipt whereof is hereby acknowledged, the said parties of the first part have bargained and sold, and by these presents do grant bargain, sell, deliver and convey unto the said party of the second part a certain tract of land lying and being in the County of Lee, State of Virginia in Rocky Station District of said County and in that section of country called the Pocket and bounded as follows, to-wit: ASSUMING on a black gum on Lick Branch marked as a line tree in a line between J.T. Cooper and Z. F. Kirk; thence Southwestardly and on a spur between the left hand and right hand forks of Lick Branch to the top of said spur; thence following said spur or ridge in same direction as it meanders to J.T. Kirk's line; thence Northwardly and running with said Kirk line to R.F. Kirk's land and with his line along the top of the ridge to Lion Parson's land ; thence Eastwardly along the top of a ridge and with the lines of Green Stapleton and John R. Carter to J.T. Cooper's line and with the same to the beginning containing 75 be the same more or less. To have and to hold the same together with the appurtenances thereunto belonging, unto the said party of second part his heirs and assigns forever except the coal right as sold to F.A. Streton by Wm. Pennington. And the parties of the first part warrant generally the title to the said Premise.

Witness the following a signature and seals.

D.D. Howard (Seal.)

Jane Howard (Seal.)

Virginia,

Lee County, to-wit:

I, J.N. Pennington a Justice of the Peace in and for the County aforesaid in the state of Virginia, do certify that D.T. Howard and Jno Powers, whose names are signed to the within writing bearing date on the 6th day of March, 1906, have acknowledged the same before me in my county aforesaid.

Given under my hand this the 10th day of March, 1906.

J.N. Pennington. J.P.

$175.00

Bal. due, with interest from Oct. 19th 1903 till paid

Sold to W. T. Gilly and J. M. Howard June 9th 1906 for $276.00

E. H. P. Trustee

Everett Waddey Co., Richmond, Va.

This Deed, *Made this* 19th *day of* October *in the year* 1903, *between* D. D. Howard and Jane Howard *of the* County of Lee *parties of the first part, and* E. H. Pennington *of the* County of Lee *party of the second part,*

Witnesseth: *That said parties of the first part, do grant, with general warranty, unto the said party of the second part, the following property, to-wit:*

Being the same land which C. D. Russell and wife by deed dated the 16th day of March, 1901 conveyed to John C. Coffman and Howard S. Stewart and recorded in deed book No. 39 page 280, and to which deed and recordation thereof reference is here made for a more particular description of the land intended to be conveyed hereby, excepting however the minerals, coal, and timber rights, which were heretofore conveyed to one F. A. Stallard by Wm Pennington

In Trust, *to secure to the holder of the hereinafter described note the payment of the sum of* Three Hundred and Seventy four dollars, evidenced by the note of said D. D. Howard payable to J. S. Roper who has this day loaned said Howard said sum of money to pay off a vendor's lien on the above land reserved in favor of C. D. Russell and by said Russell assigned to A. M. Pennington, J. B. Kirk and L. M. Zeh

In the event that default shall be made *in the payment of the note hereinbefore mentioned, or any installment of taxes or levies on said real estate, or in any insurance premium on the improvements thereon, when, and as the same, or any of them, shall become due and payable, (and such taxes and levies are to be*

construed as due and payable on the day preceding that on which any penalty is by law added thereto), then the Trustee or either of them, on being required so to do by the holder of said note, shall sell the property hereby conveyed.

And it is covenanted and agreed between the parties aforesaid, that in case of a sale, the same shall be made at public auction, at the front door of the Court-house of said County, &c or at such other place as may be determined by the Trustee after first advertising the time, place and terms of sale for 30 days by written notices posted at 3 places in said County and upon the following terms, to-wit: For cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, including a trustee's commission of five per centum, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said note, and if there be any residue of said purchase money, the same shall be made payable at such time, and secured in such manner as the said part ~~ies~~ of the first part their executors, administrators or assigns, shall prescribe and direct, or in case of their failure to give such direction, at such time and in such manner as the said Trustee shall think fit.

The said part ~~ies~~ of the first part covenant ~~—~~ to pay all taxes, levies, dues and charges upon the said property hereby conveyed, so long as the debt hereby secured remains unpaid, ~~and to keep the improvements upon said property constantly insured in some good and responsible insurance company in a sum of not less than $ for the benefit of the holder of the said note hereby secured in the order of their priorities, as above stated, and to deliver the said policy or policies to the said trustee and agree upon their failure so to do, that the holder of said note may, if he or they see fit, effect insurance upon said improvements, or any of them, in such sum, not exceeding said $ as he or they may deem adequate for the security of the debt hereby secured; but it shall not be incumbent upon the holder of said note to effect or renew any insurance upon said improvements or to pay any taxes on said property~~, but that all ~~premiums and~~ taxes paid therefor, if any, with interest from the time of payment, shall constitute a lien under and by virtue of this deed on the property hereby conveyed, and in event of sale shall be treated as a part of the debt secured by this deed, and as a part of the cost of executing this trust; and if there be no sale under this deed, then all such ~~premiums~~, taxes and levies are to be recoverable by all the remedies at law, or in equity, by which the debt aforesaid may be recoverable, and the parties of the first part hereby waives the benefit of their homestead exemption as to the debt secured by this deed and any expenditure for taxes, levies ~~or insurance premiums~~ by the holder of said note in pursuance of this deed.

If no default shall be made in the payment of the above mentioned ~~or insurance premiums~~, then upon the request of the parties of the first part, a good and sufficient deed of release shall be executed to said D. D. Howard at his own proper costs and charges.

WITNESS the following signature and seal:

D. D. Howard SEAL

Jane her Howard SEAL
Mark

SEAL

SEAL

State of Virginia,

County of Lee to-wit:

I, B. N. Barnett a Justice of the peace in and for the County aforesaid, in the State of Virginia, do certify that D. D. Howard and Jane Howard whose names are signed to the foregoing writing, bearing date on the 19th day of October 1903, have acknowledged the same before me in my County aforesaid.

Given under my hand this 20 day of October 1903

B N Barnett J.P.

MEMO.—To be acknowledged before any officer authorized to take acknowledgments.

Virginia, Lee County to-wit:

In the Office of the Clerk of the County Court for the County of Lee the 16th day of November 1903, this deed was presented and, with the certificate annexed, admitted to record at 11 o'clock A. M.

Teste:

B. W. Morgan Clerk.

W. D. Howard

& wife

to

Deed of Trust

E. H. Pennington

Trustee for J. P. Cooper

Nov. 16th 1903

Presented in office and, with Certificate admitted to record at 11 o'clock A. M.

B. M. Morgan Clerk.

County Court of Lee County

Recorded, Deed Book No. 41

Page 16 and 17

Tax, - - - - - $ 1.00

Fee, - - - - - 1.25

2.25 Paid

Mail to Pennington Gap -
to J. P. Cooper

Everett Waddey Co., Richmond, Va.
Form No. 2.

This contract made and entered
into on the blank day & date of May 1904
between B. I. Howard & J. T. Cupper both of
the County of Lee State of Virginia
for a small piece of land containing
about four acres Including
Landing & probably orchard McNabb
Is to you as a credit on a note I hold
against E. I. Howard this land is to you
as a credit for one hundred and
forty dollars J. T. Cupper

Exhibit 3.

E.W.PENNINGTON. ROBT. L.PENNINGTON.
Pennington Bros.
ATTORNEYS AT LAW,
JONESVILLE AND PENNINGTON GAP, VA.

Pennington Gap,Va.,9/19/1908.

Mr.H.C.T.Ewing,
Jonesville,Va.

Dear Sir:-

Please tax up the costs in the case of D.D.Howard Vs.W.T. Gilley and J.M.Howard. It was decied a few days ago ,and issue an execution for the costs against D.D.Howard.The defendants got a judgement for their costs. Also Issue a summons on suggestion suggesting that I am indebted to said D.D.Howard.Have both the execution and summons on suggestion placed in the hands of the sheriff at once.

Also issue a writ of possession for the lands mentioned in the old ejectment case; I think the judgement in the ejectment case was decied either last May or December. Issue an execution also for the costs in the ejectment case. Be sure and do this on next Monday.

Yours very truly,
E. W. Pennington.

Commonwealth of Virginia,

County of Lee, to-wit:

To the Sheriff of said County,- Greeting:

Whereas on the 16th day of June, 1906, a judgement was obtained before A. N. Pennington a justive of the said county in favor of J.T.Cooper against D.D.Howard for the sum of $24.32 with legal interest thereon from the 13th day of June, 1907 [redacted] paid and $1.00 costs, and, whereas, on the 16th day of June, 1906, a writ of fieri facias was issued by said Justice, directed to the sheriff of said county, and a suggestion having been made by the said J.T.Cooper, that by reason of the lein of the said fieri facias, there is a liability on W.T.Gilley and John M.Howard, persons other than the said judgement ~~debtor~~ debtor:

Therefore you are hereby commanded that you summon the said D.D.Howard, W.T.Gilley, and John M.Howard to appear before me at my office in Lee County, Virginia, on the 23rd day of June, 1906 [redacted] answer the said suggestion, and that you have then and [redacted] nt, and make return how you have executed the same.

Given under my hand this the 16th day of June, 1906.

J. J. Yeary J.P.

After hearing the Evidence in this case, Judgment is that J. T. Cooper Recover from the Defendants D D Howard and W. T. Gilley and J M Howard Garnishee the sum of $24.32 and cost of warrant & Garnishee which I recon to be $4.50 Given under my hand this March 24th 1907

J. J. Yeary J. P.

J. T. Cooper

vs. "Garnishment"

D. D. Howard et al

Executed By delivering a true copy of the within to W. T. Gilley on the 16th and D D Howard same day and further executed By Delivering a copy to J M Howard on the 18th day of June 1906

E. S. Stapleton
D S for Jm Ball
S D C

Serving 3 copys 1.50
Garnishee 3.00
4.50

Judgement 24.32
Cost on warrant
and Garnishee 4.50
$28.82

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 306.

Know all Men by these Presents, That we D. D. Howard and A. R. Stapleton & J. J. Stapleton are held and firmly bound unto the Commonwealth of Virginia, in the sum of ($300.00) Three Hundred Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and also of any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of said office, post or trust, with coupons detached from the bonds of this State. Sealed with our seals, and dated this 9th day of December one thousand nine hundred Seven.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound D. D. Howard on his bill in chancery against W. T. Gilley and John M. Howard addressed to the Judge of the Circuit Court of the County of Lee has obtained from the said Judge an injunction to enjoin and restrain the said defendants from further prosecuting the action of ejectment in the bill mentioned,

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefits thereof until he or some one for him, shall enter into a bond, with good security, in the clerk's office of the said court, payable to the Commonwealth of Virginia, in the penalty of ($300.00) Three Hundred dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now, therefore, if the said D. D. Howard shall pay all such costs as may be awarded against him, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

Executed in the presence of

D. D. Howard SEAL.

A R Stapleton SEAL.

SEAL.

In the Clerk's Office of the ____ *Court of the* ____ *of* ____

This day personally appeared before me ____, Clerk of the ____ Court of the ____ of ____, and made oath that ____ estate, after the payment of all ____ just debts, and those for which ____ he ____ bound as security for others and expect to have to pay ____ worth the sum of ____ dollars, over and above all exemptions allowed by law.

Given under my hand, this ____ day of ____, 19____.

____ Clerk.

FORM NO. 306.

D. D. Howard, et al

to { INJUNCTION BOND.

$300.00

Commonwealth.

Filed Dec. 9, 1907.
W. C. Ewing,
Clerk.

D. D. Howard
J. T. Cooper

24.32 } Pd by
14.55 } Cooper
$38.87

VIRGINIA, Lee County, to-wit:

To the Sheriff or any Constable of said County:

I hereby command you in the name of the Commonwealth of Virginia to summon D. D. Howard

if to be found in your District, to appear at my office .....a. m.....p. m., in the said county, the 16 day of June 190 6 before me or such other Justice of said county as may then be there to try this Warrant, to answer a complaint of J. T. Cooper

upon a claim not exceeding One Hundred Dollars, exclusive of interest to-wit: The sum of $24.32 due by acct and then and there make return of this warrant.

Given under my hand, this 9th day of June 1906

J. J. Yeary J. P.

Judgment is granted in favor of the Plaintiff J. T. Cooper for the sum of $24.32 with interest from the 16 day of June 1906 'till paid and $1.00 for cost. Given under my hand the 16 day of June 1906

A. N. Pennington J. P.

VIRGINIA, County, to-wit:

To the Sheriff or any Constable of said County:

I hereby command you in the name of the Commonwealth of Virginia, that of the goods and chattles of of D. D. Howard

in your County, you cause to be made the sum of $24.32 with interest thereon from the 16 day of June 1906 'till paid, which J. T. Cooper Judgment has recovered before me on a warrant in Debt, and also the sum of $1.00 adjudged for costs in prosecuting said warrant.

Given under my hand, this 16 day of June 1906

A. N. Pennington J. P.

J T Cooper
V S Lin acct
D D Howard

Executed June
the 11 Day 1906
Bey Delivering
a true copy of
warrant to
D. D. Howard
E. S. Stapleton D.S.
for P. M. Ball
S.F.C.

"Warrant"

To W. T. Gilley, J. M. Howard, J. T. Cooper & E. W. Pennington, Trustee:

Gentlemen:-

You will please take notice that on the 28th day of April, 1908, between the hours of 9 o'clock A. M. and 6 o'clock, P. M. of said day at the law office of James W. Orr, in the town of Jonesville, Virginia, I will proceed to take the depositions of E. S. Stapleton and others, which depositions when taken are to be read as evidence in my behalf in a certain suit in chancery pending in the Circuit Court of Lee County, Virginia, in which I am plaintiff and you are defendants, and if from any cause the taking of the said depositions be not commenced on said day, or if commenced be not completed on that day, the taking of the same will be adjourned from time to time, between the same hours, and at the same place until completed.

April 20th 1908.

Respectfully,

D. D. Howard.

By Duncan & Gridlin and James W. Orr, attys.

D. D. Hamard.
vs Notice
W. T. Gilley et al.
~~Apr 28 1908.~~

Legal service is
accepted - April
20 - 1908
Pennington Bros
Attys
for Defts -

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon W. T. Gilley, J. M. Howard, J. T. Cooper, and E. W. Pennington, Trustee

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the 3rd Monday in Jan 190 7, to answer a bill in chancery exhibited against them by D. D. Howard

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the 31st day of Dec, 190 7, and 132 year of the Commonwealth.

A Copy, Teste:

H. C. T. Ewing, Clerk

[illegible], Clerk

To enjoin and inhibit the plaintiffs in the action of Ejectment in the bill mentioned from further proceeding in said action until the future order of the Court. Bond with surety having been given as required by the order of injunction.

Teste: H. C. T. Ewing, Clerk.

Served on Sen Cooper Jan 3

D. D. Howard

vs

SUBPŒNA IN CHANCERY

W. T. Gilley, et al

Orr & Noel p. q.

To 2nd Jan. Rules

Circuit Court

1908

Executed by serving a true copy of the within on W. T. Gilley J. M. Howard D. T. Cooper & E. W. Bennington this Jan. 3, 1908

W. Y. Tucker S.L.C.

Everett Waddey Co., Stationers and Printers. Richmond, Va. } Form No. 204.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU THAT YOU SUMMON ~~Blanton~~ ~~Colton~~ E. S. ~~Stapleton~~ & Igion ~~Stapleton~~

to appear before the ~~Judge of our Circuit Court~~ undersigned Notary Public of the County of Lee, at the ~~court-house~~ law office of James Orr in Jonesville Va. ~~thereof~~, on the 28" day of April 1908, to testify and the truth to say in behalf of the Plaintiff, in a certain matter of controversy in our said court before the ~~said~~ Judge depending and undetermined between D. D. Howard.

Plaintiff, and

W. J. Gilley et al Defendants. And this they shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, ~~A. P. Munsey~~ L. A. Brown Notary Public ~~Clerk~~ county of our said ~~court~~, at the court-house the 20" day of April 1908, and in the 12 year of the Commonwealth.

L. A. Brown N. P.

Blanton Calton can note
come this sick Bad off
and confined in his Bed

FORM No. 204.

D. D. Howard.

vs. } SUBPOENA FOR WITNESS.

W. T. Gilley et al.

Circuit Court,

the 28th day of April

1908.

Executed April
25th 1908 By
Summons in all
of the within
witness
E S Stapleton D S
for W. Y. Tucker
S F C

S. 60 Stapleton
2.00 Tucker
$2.60